IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.36943 of 2007

1. YOGENDRA RAM Son of Raghunandan Ram, R/o village Rampur Khajuriya, Chamar Toli, P.S. Dumariya, District – Eact Champaran
2. Vijay Kumar S/o Kishundeo Prasad, R/o village + P.S. Chakiyam, District East Champaran
3. Prabhakar Pandey, S/o Jainarain Pandey, R/o village Chakwara, P.S. Pipra, District East Champaran.

… Petitioners

Versus

STATE OF BIHAR ……. Opp. Party

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4 27.11.2008 Heard Mr. Rakesh Kumar, the learned counsel for the petitioners and Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State.

Petitioner nos. 1 and 3, Yogendra Ram and Prabhakar Pandey who are dealers under the Public Distribution System and petitioner no. 2, Vijay Kumar who is the Deputy Manager, State Food Corporation, who face prosecution in connection with Chakiya P.S. Case No. 127 of 2000 registered under section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act"), and have prayed for the quashing order dated 26.9.2006 whereby the prayer of the petitioners for discharge has been rejected by the learned Sub Divisional Judicial Magistrate, East Champaran at Motihari.

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It appears that a truck loaded with 75 bags of wheat was seized by the Sub Divisional Officer, Chakiya, on suspicion that the wheat belonged to red card holders and was being transmitted for the purpose of black marketing. It also appears that wheat which was allegedly seized was subsequently released in favour of one Gopal Modi by the order of the Sub Judge, East Champaran at Motihari

dated 24.1.2001 in compliance to the order of the Court passed in Supply Case no. 1 of 2001.

The submission advanced on behalf of the petitioners herein are that they are neither the owner of the vehicle which was carrying the bags of wheat nor did they have any connection with the alleged purchase of wheat from the said Gopal Modi.

This application is fit to be allowed not for the reasons submitted by the learned counsel for the petitioners but on the three grounds stated herein below.

Firstly dealers under the Public Distribution System and officials of the State Warehousing Corporation and the Food and Civil Supplies Department are exempted from prosecution by virtue of Clause 31(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984, as they happened to be the agent of the Government and their prosecution would amount to be an abuse of the process of the Court.

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Secondly as is well settled by a catena of decisions both of the Apex Court as also this court for inviting prosecution under section 7 of the E.C. Act, the F.I.R. must disclose as to which Order made under section 3 of the E.C. Act has been contravened or violated and in the absence of such statement or declaration in the fardbeyan or compliant no prosecution lies under section 7 of the E.C. Act.

Thirdly mere allegation that the articles ceased was purportedly for the purposes of black marketing is not complete in

the prosecution

The element of sale being also absent the allegation of black marketing is not complete. Gainful reference in this connection may be made to the decision of Abimanyu Paul Vs. State of Bihar (1987 PLJR 570). Due regard being had to the facts and circumstances of the case and the discussion made above prosecution of the petitioners herein would amount to be an abuse of the process of the Court and the same cannot be sustained in the eye of law.

Accordingly the application is allowed and the prosecution of the petitioners herein is hereby quashed.

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(Abhijit Sinha, J.)

Spd/-